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In reply, please refer to:
EMD/SHWB

June 5, 2013

TO: Interested Parties

FROM: Steven Y.K. Chang, P.E., Chief
Solid and Hazardous Waste Branch

SUBJECT: Response to Public Comments from Hearing on the Department of Health's Amended Hawaii Administrative Rules, Title 11, Chapter 281, Entitled "Underground Storage Tanks"

On April 8, 2013, a public hearing was held on the proposed rule changes for Hawaii Administrative Rules, Title 11, Chapter 281, in Honolulu, Hawaii. Participants in Hilo, Kona, Kahului, and Lihue were also present through video conferencing. Ninety-three (93) members of the public attended, with four (4) members of the public submitting oral testimonies. The public notice set a deadline for May 10, 2013 for submission of written comments.

This Response to Public Comments document addresses the public comments received at the public hearing and written comments that have been submitted to the Department of Health (DOH) both before and after the public hearing. All comments received on or before May 10, 2013 have been categorized and summarized in the attachment along with copies of all of the written comments. Duplicate comments have been combined, where appropriate. Transcripts of these hearings have been posted on the DOH's website at: http://hawaii.gov/health/environmental/waste/ust/index.html.

Based on the response from the public, the DOH has deferred many of the previously proposed changes for a later date. Also attached is a brief summary of the final proposed changes.

Questions about this Response to Public Comments document may be directed to Ms. Thu Perry of our Underground Storage Tank Section at (808) 586-4226.

Attachments

BRIEF SUMMARY OF PROPOSED CHANGES TO
HAWAII ADMINISTRATIVE RULES
TITLE 11, CHAPTER 281
(rev 6/2013)

Secondary Containment (Hawaii Administrative Rules (HAR) 11-281-17, and HAR 11-281-51(e))

All USTs or UST systems installed on or after the effective date of the rules must be provided with secondary containment (i.e. be double walled) AND use interstitial monitoring for release detection on the tank(s) and piping.

If a portion of single walled piping is replaced, the replaced portion must be provided with secondary containment and interstitial monitoring.

Operator Training (HAR 11-281-46)

There must be at least one class A operator, class B operator, and class C operator, trained and designated for each facility. Owners and operators will decide and appoint their own class A, B, and C operators. Operator classes and basic training requirements are described below.

Class A: This individual is expected to be someone with overall responsibility for the UST system, someone who manages resources to ensure proper operation, maintenance and compliance of the UST system. Training should provide a general knowledge of the UST system, and give an overview of general requirements for operation, maintenance and compliance of the UST system.

Class B: This individual is expected to be responsible for implementing the day-to-day operation, maintenance and compliance requirements for the UST system. Training should provide a general knowledge of these areas.

Class C: This individual is expected to be responsible for initially responding to alarms and emergency conditions. Training should cover proper responses to these conditions.

One person may be designated for all three operator classes provided they complete the training for all three classes. One person may be designated for multiple facilities. The designated person(s) does not necessarily have to be an employee of the facility.

Training programs must be approved by the Department of Health (DOH) and most will be available online, provided by private vendors, for all three classes of operators. A list of approved vendors will be posted on the DOH website.

Owners and operators will have 120 days after the effective date of the rules to designate a class A, class B and a class C operator. These operators must be trained and certified. Once the class A and class B operator assume responsibilities, the owner and operator shall submit a written notice to the

department identifying the class A and class B operator. The notification must include the name of each operator, the date training was completed, the name and address of each facility where the USTs or tank systems for which the operator has been designated is located and written verification from an approved training and certification program that the class A and class B operator has successfully completed the operator training and is certified.

Subsequently, if there are any changes with class A or class B operator, you will need to submit class A and B operator designee names to DOH no later than 30 days after they assume responsibility. The notification must include the name of each operator, the date training was completed, the name and address of each facility where the USTs or tank systems for which the operator has been designated is located and written verification from an approved training and certification program that the class A and class B operator has successfully completed the operator training and is certified.

A form called "Statement of Training for Underground Storage Tank Operator A and B" can be found on the DOH website and may be used if desired. Class C operator designee information does not need to be submitted to DOH.

Owners and operators must maintain current copies of all operator training certifications for each UST or tank system's designated class A, class B and class C operator.

Retraining for class C operators will be required annually. Retraining for class A and B operators will be required every 5 years. If DOH determines that an UST or tank system is out of compliance, the class A and class B operator must be retrained and recertified within ninety days. An UST or tank system is out of compliance if the system:

(1) Meets any of the delivery prohibition criteria; or
(2) Is not in significant compliance with other requirements, such as temporary or permanent closure, tank registration or financial responsibility as determined by the director.

Permits (HAR 11-281-23(a), HAR 11-281-24, and HAR 11-281-25), **Modifications** (HAR 11-281-29)

All owners/operators will be required to have a permit for their UST systems. Owners/operators of existing UST systems that previously had not been required to obtain a permit will need to submit an application for a permit to operate on the form labeled "Application for an Underground Storage Tank Permit," along with a $150 fee (the "Certification of Installation" form does not need to be submitted). Existing UST owners/operators will have three years from the effective date of the rules to obtain an operational permit. The permit is good for five years and requires renewal.

New installations still require a permit to install and operate prior to installation, followed by submission of the "Certification of Underground Storage Tank Installation" form within 30 days after the installation.

A modification to the permit is required when an UST is added or removed from an UST system, and for any change that would place the existing UST or UST system out of compliance. An application for modification ("Application for an Underground Storage Tank Permit") must be submitted no later than 60 days prior to the occurrence of the event that prompts the application.

Emergency Generators (HAR 11-281 01(c), HAR 11-281-17, HAR 11-281-41, and HAR 11-281-46)

Upon the effective date of the rules, new installations will need to be provided with secondary containment and interstitial monitoring for release detection. New installations are subject to release detection requirements in subchapter 5.

Spill buckets are subject to annual testing as described in the sections below.

UST systems for emergency generators are subject to class A, B, and C operator requirements.

Spill Prevention Equipment, Containment Sumps and Under Dispenser Containment (HAR 11-281-19, and HAR 11-281-41(c))

Dispensers installed on or after the effective date of the rules must be provided with under dispenser containment (UDC). The UDC must be monitored for leaks with a sensing device that signals the operator if a leak is detected.

Spill prevention equipment (spill buckets) must pass a test annually to ensure that they are liquid tight. The method for testing needs to be one that is developed by the manufacturer, a nationally recognized organization, an independent testing laboratory, or other method approved by DOH. The Petroleum Equipment Institute (PEI) has published procedures for this kind of testing in their publication RP1200, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities, available through PEI.

Spill prevention equipment, UDCs and containment sumps must be maintained free of regulated substance, water and debris at all times.

Overfill Prevention and Maintenance (HAR 11-281-14(c)

Overfill prevention methods that rely on the use of alarms must have the alarms clearly labeled and located where the delivery person can clearly see AND hear the alarm in order to immediately stop delivery of the product.

Release Detection Equipment Maintenance (HAR 11-281-51(c))

Annual maintenance or service checks on release detection equipment must be done by a technician trained or certified for the equipment they are servicing.

Repairs to Tanks and Piping (HAR 11-281-44(b)(3))

Prior to returning USTs to service, repaired walls of USTs that routinely contain product must pass a **precision** tightness test that is third party certified, and meets the requirements of tank tightness testing in HAR 11-281-52(3). (Note that the 0.1 ATG test will not be accepted for a precision test as it does not require the determination of groundwater depth.) Repaired piping that routinely contains product, must be followed by a line tightness test that utilizes a 0.1 gph leak rate at one and one-half times the operating pressure, prior to returning the piping back to service. Repaired tank and piping containment walls (secondary containment) must pass an integrity test using vacuum, pressure or liquid, prior to returning the equipment to service.

Records (HAR 11-281-45(b), and HAR 11-281-46)

If a release detection monitoring system is capable of producing a written (printout) or electronic record of testing results, DOH will require the written or electronic record to satisfy recordkeeping requirements for monitoring release detection. In that case, a handwritten log will no longer be an acceptable form of documenting compliance with release detection monitoring. If the monitoring system in place is not capable of producing a written or electronic record, a handwritten log may be used.

Release detection records and maintenance records must be kept for at least three years after the record is generated.

Please ensure that your service provider documents testing the spill buckets.

Submit class A and B operator designee names with associated facilities to DOH no later than 30 days after the operator assumes responsibility, and keep training and certification information for operators A, B, and C on site.

Notification Requirements (HAR 11-281-21.5(a), and HAR 11-281-46(a)(3))

DOH must be notified of dispensers installed on or after the effective date of the rules.

DOH needs to be notified of your designated class A and B operators for each UST or tank system in use or temporarily out of use no later than 30 days after an operator assumes the operator's responsibilities.

The completion of the "Notification of Underground Storage Tanks" form needs to be completed when changes to the UST or tank system occurs. Refer to 11-281-21.5(a) for a list of these changes. The form shall be submitted to DOH within 30 days following the change.

Delivery Prohibition (HAR 11-281-129)

The DOH has the authority to tag a delivery fill tube with a notice prohibiting delivery, deposit or acceptance of regulated substance into an UST or tank system. This would be done for violations that could have a significant impact on

human health or the environment, such as lack of functioning release detection, lack of proper spill, overfill or corrosion protection, etc. The decision to tag a fill tube may be contested at a hearing within 48 hours upon the department's receipt of a written request by the owner or operator.

After the violation has been corrected and DOH has confirmed compliance, DOH will remove the tag, or provide the owner and operator with notice that the tag may be removed.

Field Citation Penalty Amounts (HAR 11-281-131, Appendix VIII)

New citations have been added to reflect proposed changes to the rules.

Tier 1 Screening Levels (HAR 11-281-78)

Action levels for soil and groundwater have been updated to reflect more recent science and are now referred to as Tier 1 Screening Levels.

Applicability (HAR 11-281-01(b))

Owners and operators of the following types of underground storage tanks or tank systems will be subject to the requirements of subchapters 6, 7, 8 and the requirements of section 11-281-12 and section 11-281-13:

(1) Airport hydrant fuel distribution USTs and tank systems directly connected to underground hydrant piping used to fuel aircraft.

(2) Field-constructed underground storage tanks and tank systems located on military installations owned and operated by the United States Department of Defense.

Suspected Release (11-281-61 and 11-281-63)

Owners and operators need to notify DOH within 24 hours upon discovery of an unexplained presence of liquid in the interstice and follow the procedures for confirmation of a suspected release.

Department of Health, Solid & Hazardous Waste Branch Response to Public Comment from Public Hearing Regarding Changes to Rules for Underground Storage Tanks

General Objections

Comment from HPMA:
"General objection: The State Department of Health is preparing to implement rules before EPA has implemented their revised rules, running the risk of adopting rules that are out of step with federal regulations, creating a very confusing regulatory environment, especially for small, single-site operators. "

Comment from JMH Inc. dba Ewa Mart & Ewa Repair Shop Inc:
"The DOH is attempting to implement major changes to the UST rules before the U.S. EPA's proposed UST rules, have been finalized and go into effect. The new rules would cause a confusing regulatory environment for small dealers like me. Additionally, increased costs to comply with the new rules will force me to pass along those costs to my customers or even reassess whether I can stay in business in the fact of higher and higher direct costs."

Comment from MidPac:
"The State Department of Health is preparing to implement rules before EPA has implemented their revised rules, running the risk of adopting rules that are out of step with federal regulations, creating a very confusing regulatory environment, especially for small, single-site operators. In addition, as proposed, the changes to the Hawaii Administrative Rules do not specifically specify the policies and procedure that will be deemed to be acceptable. As an example the annual testing requirements do not specify the method of testing containment vessels and fueling systems components."

Comment from HFN Hawaii:
"First of all we are puzzled as to why the State Department of Health is preparing to implement rules before EPA has implemented their proposed rules. The State of Hawaii runs the risk of adopting rules that are out of step with federal regulations, creating a very confusing and burdensome regulatory environment for all UST owners and operators. In addition, as proposed, the changes to the Hawaii Administrative Rules do not specifically specify the policies and procedures that will be deemed to be acceptable."

Comment from HFN Maui Petroleum:
"General objection: The State Department of Health is preparing to implement rules before EPA

has implemented their revised rules, running the risk of adopting rules that are out of step with federal regulations, creating a very confusing regulatory environment, especially for small, single-site operators. "

"In addition, as proposed, the changes to the Hawaii Administrative Rules do not specifically specify the policies and procedures that will be deemed to be acceptable. As an example of annual testing requirements do not specify the method of testing containment vessels and fueling systems components."

Comment from Aloha Petroleum:
"We also do not understand the DOH's rush to adopt and implement the Proposed Changes even before the Environmental Protection Agency ("EPA") has adopted and implemented the revised federal UST regulations. The State of Hawaii runs the risk of adopting rules that are out of step with federal regulations, and creating a very confusing and burdensome regulator environment for all UST owners and operators."

STATE Response:
Federal and state laws require that Hawaii incorporates the components of operator training and secondary containment into our rules. Delivery prohibition authority is given in Act 007, Session Laws of Hawaii 2009.

EPA is requiring that states incorporate the above changes into their rules by August 2012. In addition, DOH proposed other changes that we believed to be more protective of the environment. It is uncertain when EPA's rules will be finalized. DOH will be required to implement any additional federal requirements thereafter.

At this time, DOH has decided to remove some of the requirements in the proposed rules. The department is deferring the requirement for annual testing of sumps, overfill equipment and under dispenser containment at this time. However, the requirement for annual testing of spill buckets will remain.

Also, DOH will remove the requirement for secondary containment of all existing single wall USTs in ten years, pending further investigation.

The requirement for release detection for emergency generators will continue to be deferred until further notice, with the exemption of new installations which are required to have secondary containment with interstitial monitoring under the Energy Policy Act.

General Compliance Costs

Comment from HPMA:
"Compliance cost is also an issue for small operators who will either have to pass additional cost to consumers or reassess whether their business can remain viable in the face of higher and higher direct cost. This effect will have particular impact to rural, low volume sites that may be forced to close because they cannot cope with the additional cost of compliance. This will limit consumer options to obtain fuel."

Comment from Robert Fung (Aloha Petroleum):
"It just feels that perhaps DOH is getting a little ahead of... the EPA in terms of the proposed UST rules. There are some questions that we have.. in terms of compliance costs that don't appear to have been taken into account. It will be a heavy burden on the small mom and pop operators that maybe have just a few stations or... tanks."

Comment from Chevron:
"We believe that compliance cost will be an issue with small operators who will have to pass an additional cost to consumers or determine whether their business can remain operating in the face of higher costs. Larger operators with multiple sites will be adversely affected by the higher compliance and will have to re-evaluate the operations of their sites. The additional costs will ultimately be passed on to the consumer at the pump. In addition, our business customers who have underground storage tanks will also be affected, and they also will have to cope with the additional compliance costs."

Comment from Gentry's Kona Marina:
"Our small off-the-beaten path single operating sites services marine businesses from diving to commercial fishing vessels and their vehicles. We employ about 8-10 full and part time personnel. We do our best to offer a competitive fuel pricing although it has been difficult given that we have a large box wholesaler within a mile of our location."

"The regulations you are proposing will add significant operating and administrative costs on ours and other single site businesses in the islands potentially eliminating most small mom-and-pop retailers who employ half a dozen or so people. I strongly urge you to weigh the potential impact of your proposed rule changes on small businesses versus the gain."

Comment from MidPac & HFN Maui Petroleum:
"Compliance cost is also an issue for small operator who will either have to pass additional cost to consumers or reassess whether their business can remain viable in the face of higher and higher direct cost. This effect will have particular impact to rural, low volume sites that may be

forced to close because they cannot cope with the additional cost of compliance. This will limit consumer options to obtain fuel. For larger operators, with multiple sites, the cost of compliance, both one-time and recurring, will adversely affect the economics of operating sites. Additional costs will invariable be absorbed by consumers in the form of higher prices at the pump."

Comment from Aloha Petroleum:
"We believe the State Department of Health ("DOH") significantly underestimates the compliance costs imposed by the Proposed Changes relating to required secondary containment, leak detection and additional testing. Given that Aloha operates multiple retail sites, the per-company compliance cost is far greater than the DOH may have contemplated. Compliance cost will also be especially burdensome for small "Mom and Pop" operators who will either have to pass additional costs to consumers or reassess whether their business can remain viable in the face of higher and higher compliance costs. The Proposed Changes will adversely impact consumer options to obtain fuel especially in rural, low volume sites that may be forced to close because they cannot bear the additional cost of compliance."

Comment from Kahala Gas:
"I believe that the SOH underestimates the cost of complying with the Proposed Changes. We are a single site operator that serves a remote community and the cost to comply would be burdensome. Costs would be either passed on to the consumer or we may close operations. Proposed rules are premature to the EPA final rules and are overreaching."

Comment from HFN Hawaii:
"We also believe the State Department of Health ("DOH") significantly underestimates the compliance costs imposed by the Proposed Changes relating to required secondary containment, leak detection and additional testing. Compliance cost is an issue for small mom and pop or single site operators who will either have to pass additional cost to consumers or reassess whether their business can remain viable in the face of higher and higher direct cost. This effect will have particular impact to rural, low volume sites that may be forced to close because they cannot cope with the additional cost of compliance. This will limit consumer options to obtain fuel. For larger operators, with multiple sites, the cost of compliance, both one-time and recurring, will adversely affect the economics of operating sites. Additional costs will undoubted be absorbed by consumers in the form of higher prices at the pump."

STATE Response:
The department analyzed the economic impact of the proposed rules to small businesses at the Small Business Regulatory Review Board (SBRRB) and received approval to move forward. It was explained that although some changes will be a significant cost to small businesses, without these preventative measures, releases from these USTs could have a great economic impact on the operator.

Since that time, the department has removed several of the proposed requirements for testing of sumps, overfill equipment and under dispenser containment and secondary containment which had posed the largest economic burden on the regulated community. The remaining requirements are either mandated by the Energy Policy Act or require a much smaller capital investment.

Comparison to HEER EALs

Comment from WMF:
"Where is the connection to the HEER tables/levels since they may change with time?"

Comment from Howard West:
"...you've replaced the Tier 1 Action Levels with screening levels for soil and groundwater.... They're the same action levels that were present..., which shows no progress by the department... in moving towards what the HEER office is establishing."

STATE Response:
Use of DOH's Hazard Evaluation & Emergency Response (HEER) Office's Environmental Action Levels (EALs) and guidance would fall under the proposed HAR §11-281-78(b)(2), alternative site specific action levels. The HEER EALs and guidance are approved by DOH for use at confirmed UST release sites.

Comment from Howard West:
"Another is that the department has united with the HEER office in requiring that environmental hazard evaluations and environmental hazard management plans be prepared for certain sites where there may be residual contamination. There is no mention of environmental hazard evaluations or environmental hazard management plans in this new document... I would suggest that it should be implemented in 11-281."

STATE Response:

In the same way the DOH HEER EALs fall under 11-281-78(b)(2), alternative site-specific action levels, so does the HEER EAL guidance which includes the EHE and EHMP. The EHE will be required to utilize the HEER EALs (environmental action levels) at confirmed UST release sites.

The DOH Tier 1 Screening Levels in the proposed rules changes are default conservative action levels for sites assuming close proximity to drinking water, surface water, and direct human exposure. As most sites do not have these conditions, alternative site-specific action levels that achieve protection of human health and the environment are appropriate. The HEER EALs and guidance have already been approved by DOH and contain action levels and procedures for the accurate assessment and remediation of UST release sites.

Secondary Containment (HAR 11-281-17 and HAR 11-281-51(e)

Comment from HPMA:

"We object to the arbitrary replacement of single-wall tanks with double-wall tanks, even if there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored. In addition, internal lining of a single-wall tank provides a cost-effective solution to providing secondary containment without having to remove existing tanks that are structurally sound. The use of an arbitrary deadline to enforce this proposed rule is also objectionable, as it does not take into account site specific variable such as soil conditions or geography."

Comment from Mark Leong:

"... just looking at the EPA-proposed rules that aren't even final yet, I mean, they're looking at no rule to replace tanks in a 10-year period which I, quite frankly, think is an arbitrary number that the State of Hawaii is coming up with."

Comment from Patel's Texaco:

"Just a few years ago we spend thousands of dollars to bring the tanks and the monitoring equipment to comply with the state and federal agencies. We believe that if these thanks and equipment is properly maintained, meet the current EPA regulations. The state's new proposed rule of replacing the tanks within 10 years is overreaching and maybe financially impossible for a lot of small business owners."

"In this economy, these added expenses may force a lot of small businesses, that have put a lifetime of hard work to built the business, to close."

"In conclusion, we believe the current EPA regulations are sufficient. All of us gas station owners are aware of our responsibilities towards our community, and are deligent (sic) about keeping our equipment maintained. Even if the small gas station owners are able financially to comply with the new regulations, the exobient (sic) cost will be passed on to the consumer in form of higher fuel prices."

Comment from Chevron:
"We do not agree to the replacement of the single-wall tanks with double-wall tanks, and we find this proposed rule as excessive and costly. Internal lining of a single-wall tank is cost effective in providing secondary containment without removing existing tanks which are structurally sound."

Comment from Gentry Kona Marina:
"Currently, the proposed rule change would make the State of Hawaii more stringent than those presented in 40 Code of Federal Regulation (CFR) Part 280, Subpart B- 280.20 – 280.22 and present significant costs to owners to retrofit existing systems with secondary containment. Many small businesses are operating and maintaining single-walled tanks in compliance with federal and state regulations without any issues. It seems arbitrary (i.e. placing a 10 year timeline) and lacks sound reasoning to put a timeline on secondary containment conversion when single walled tanks can, and are currently, being monitored and maintained for leaks with other effective methods."

Comment from MH Inc. dba Ewa Mart & Ewa Repair Shop Inc:
"I object to the requirement of replacing existing single-wall UST's with double-wall UST's because there is no definitive reason to replace single-wall tanks that are being adequate maintained and monitored. The 10-year deadline is also objectionable because it doesn't take into account site-specific variable such as the condition of the UST's. The cost to comply with this new requirement would be astronomical and may force small dealers like me to close because we cannot afford the direct cost of replacing UST's along with the loss of business due to closure during tank replacement."

Comment from MidPac:
"We object to the arbitrary replacement of single-wall tanks with double-wall tanks, even if there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored. In addition, internal lining of a single –wall tanks provides a cost-effective solution to providing secondary containment without having to remove existing tanks that are structurally sound. The use of an arbitrary deadline to enforce this proposed rule is also objectionable, as it does not take into account site specific variable such as soil conditions or geography."

"MPP has specific and documented evidence that proves that the structural integrity of a properlyy maintained single-wall meets or exceeds original manufacturer specifications. We have recently lined our remaining single-wall tanks that were inspected as part of the lining process. The inspection showed that the tanks showed basically no signs of degradation after multiple decades of being in-service. Arbitrarily removed such tanks after a given period of time is, in our opinion, unnecessary."

Comment from Aloha Petroleum:
"Aloha objects to the arbitrary 10-year replacement of single-wall tanks with double-wall tanks in the absence of scientific support or data to support this rule change. We see no reason to support replacing structurally sound single-wall tanks after 10 year especially if they are being adequately maintained and monitored. In addition, internal lining of a single-wall tank provides a cost-effective solution to providing secondary containment without having to remove existing tanks that are structurally sound."

"The cost of replacing every single-wall UST owned by Aloha with new double-wall tanks within ten years from the effective date of these rules would be astronomical. Aloha has over 100 single-wall tanks in service that would have to be removed and replaced with double-walled tanks over a 10-year span at a cost of over $8 million."

"This rule would be retroactive for all UST systems and also require replacing single wall piping with double wall piping. It would also be cost-prohibitive to dig up and replace all single-wall piping with double wall piping. Aloha supports the EPA's proposed definition for "replaced" for triggering the secondary containment requirement for existing tanks and piping rather than the DOH requirement to replace all single wall tanks and single wall piping. Aloha also agrees with the EPA that "replaced" should apply to piping only when 50% or more of a pipe run into a single tank is removed."

Comment from HFN Maui Petroleum:
"All of this equipment was installed late in the 20th Century with warranties and assurances that would last well over 30 years of commercial operations by manufacturers."

Comment from HFN Hawaii:
"We object to the arbitrary replacement of single-wall tanks with double-wall tanks, even if there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored. In addition, internal lining of a single –wall tanks provides a cost-effective solution to providing secondary containment without having to remove existing tanks that are structurally sound. It is our understanding through discussion with other petroleum marketers in the State that there is recent data to suggest that single wall tanks, if maintained and monitored, meet or exceed manufacturers specifications rendering the 10 year replacement

rule overreaching and arbitrary. The use of an arbitrary deadline to enforce this proposed rule is also objectionable, as it does not take into account site specific variable such as soil conditions or geography."

"The rule would be retroactive for all UST systems and also require replacing single wall piping with double wall piping. It would also be cost-prohibitive to dig up and replace all single-wall piping with double wall piping. HPI supports the EPA's proposed definition for "replaced" triggering the secondary containment requirement for existing tanks and piping rather than the DOH requirement to replace all single wall tanks and single wall piping. HPI also agrees with the EPA that "replaced" should apply to piping only when 50% or more of a pipe run to a single tank is removed. "

Comment from HFN Maui Petroleum:
"We object to the arbitrary replacement of single-wall tanks with double-wall tanks, even if there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored. In addition, internal lining of a single –wall tanks provides a cost-effective solution to providing secondary containment without having to remove existing tanks that are structurally sound. The use of an arbitrary deadline to enforce this proposed rule is also objectionable, as it does not take into account site specific variable such as soil conditions or geography. All of this equipment was installed late in the 20th Century with warranties and assurances that it would last well over 30 years of commercial operations by manufacturers."

Comment from Tesoro:
"Secondary Containment (HAR 11-281-17, and HAR 11-281-51(e)).
"All existing underground storage tanks (USTs) and UST systems must be provided with secondary containment within 10 years of the effective date of the rules."

"Tesoro recognizes the environmental benefits of this change and endorses it as a general rule, however, we would like to point out that this requirement with no provision to deal with unusual circumstances, may not be the best interests of the people of the State of Hawaii. Because of the unique geological makeup of the Hawaiian Islands, there are many stores currently operating which would be put out of business because of this rule. For instance: in the case of a store with extremely high ground water, where the initial installation was possible in the past, new regulations and changing ground water conditions may make replacing the tank prohibitively expensive and nearly impossible from a logistics standpoint. This would, most likely, put the store out of business. If this store was located in the middle of Honolulu the impact to the surrounding community would be minimal. If however, the store is in a rural area, the impact would be much more drastic. These outlying stores frequently are the only source of fuel, groceries and sundries and often provide a major source of employment for the area. The loss of these stores would be a major detriment to the community."

"With this reasoning in mind, Tesoro believes that adding an element to this rule that would allow stores, on an individual basis, to petition for exception to the ten year requirement would be a benefit to the State of Hawaii. The state would retain the ability to look at each case on it's individual merits and make the determination which would serve the community, possibly requiring additional testing for the tank system or assisting the owner in some way to upgrade and keep their store in business."

Comment from Kahala Gas:
"Secondary Containment – I object to the arbitrary replacement of single wall tanks that are being adequately maintained and monitored, with double wall tanks. Tank lining companies have recent data to prove that the integrity of recently lined single wall tanks in Hawaii meet or exceeds original manufacturer specifications. Choosing 10 years to replace single wall tanks is arbitrary."

Comment from 76 Dealers:
"Thirdly, some of us have sites that have lined-single wall tanks which could affect our business because of the additional cost of having to arbitrary replace single-wall tanks with double-wall tanks, even if there is no definitive reason to replace single-wall tanks that are being adequately maintained and monitored."

"In conclusion, the ensuing costs of some of these proposed rules could possibly trickle down to the consumer. For these reason which could affect the continued success of our business, we oppose adoption of the Hawaii proposed rulings."

STATE Response

The department is deferring the requirement for secondary containment for existing USTs within ten years of promulgation of the proposed rules. DOH will conduct further investigation to address Hawaii's large percentage of aging single wall tanks and may reintroduce this requirement at a later date.

Comment from Aloha Petroleum & HFN Hawaii:
"The DOH is proposing that owners and operators install under-dispenser containment beneath new and replaced dispensers. Aloha agrees with the DOH that under-dispenser containment is required only for new dispenser systems."

"The proposed rule is not clear on which equipment must be replaced to rise to the level of a "new" dispenser system and trigger the under-dispenser containment requirement. Under-dispenser containment under the proposed rule would occur with the replacement of check valves, shear, unburied risers or flexible connectors. Aloha believes that the trigger for under-dispenser containment should be the replacement of ***all*** equipment in the vertical footprint of

the dispenser down as far as the horizontal supply line that brings product from the UST. This provision as currently proposed creates a powerful disincentive to upgrade older UST equipment as owners who do would be subject to burdensome and costly testing and inspection requirements. Indeed, owners of older equipment are more likely to avoid these costs and burdens by simply keeping existing UST systems in the ground as long as possible, thus increasing the potential risk for a release. The DOH's proposal actually penalizes those who make the upgrades while rewarding those who don't."

"Aloha's proposed trigger reflects standard industry practice when installing a "new dispenser system" – everything down to the supply line from the UST. Installing under-dispenser containment requires breaking concrete at existing facilities. Any time concrete is broken at an existing facility, costs rise exponentially. To minimize the substantial cost of this mandate, DOH's under-dispenser trigger must also assume the replacement of equipment that requires the breaking of concrete. Aloha believes that the vertical footprint trigger correctly and fairly balances cost considerations with the added environmental protection that under-dispenser containment would provide. Aloha also believes that the installation frequency of under-dispenser containment at existing facilities would not be substantially altered with adoption of the vertical footprint trigger. Leaving the proposed requirements as is will discourage the replacement of older crash/impact valves and flex connectors."

STATE Response:
Under the Energy Policy Act, all new and replaced dispenser systems will be required to have under dispenser containment installed. Repairs made to dispenser systems do not warrant the requirement for a new installation of UDC.

Spill Buckets, Sumps & Overfill Equipment
HAR 11-281-19 and HAR 11-281-41(c) and (d)

Comment from HPMA:
"The method of testing spill prevention equipment, containment sumps and under dispenser containment is objectionable to HPMA in the following areas:

- The method of testing of the equipment may actually damage equipment that is being tested.
- The cost of the annual testing is high and will be passed on to consumers.
- The assurance offered by this type of testing may not be commensurate with the amount of cost and disruption to businesses."

"HPMA opposes this requirement [regarding overfill prevention and maintenance] primarily because the removal of drop tubes is required. They are fragile and expensive and not meant to be removed for inspection, but only to be replaced."

Comment from Robert Fung:
"Some of the methodologies that in terms of testing, we're not sure....we want to understand better... justification for some of these testing requirements.... Testing the containment sumps in terms of the costs handling the liquid after that in terms of the compliance costs."

"Another question we had was in terms of the drop tubes. They're not designed to be taken out t o be inspected. Merely, just if there's a problem with it, it has to be replaced."

Comment from Mark Leong:
"Spill prevention equipment, containment sumps, same concerns. You know, we feel visual inspection is sufficient. Needless generation of hazardous wastewater that must be handled, stored, transported and disposed has unnecessary compliance costs, not only to the mom and pop, but to the small petroleum marketers as well."

"The testing that's being required, the State of Hawaii refers to the EPA RP 1200, which I understand doesn't meet any ANSI specifications, and I'm pretty sure the PEI didn't include any small petroleum marketers or mom and pop store in coming up with that RP 1200 rule."

"So... along with overfill protection is asking for liquid testing as well. Again, needless generation of waste product... but it applies to vacuum and pressure testing. Existing equipment with secondary containment is not necessarily designed to or for positive or negative pressure. So we think that the testing would void warranty or lead to a hole or rupture in a perfectly fine system to begin with."

Comment from Keaau Service:
"Secondly, the method of *testing spill prevention, containment sumps and under dispenser containment is objectionable to MPP in the following areas:*

- The method of testing of the equipment may actually damage equipment that is being tested because these components were not designed to be tested in such a manner, i.e., overfill tube flappers
- The time and cost of the annual testing is already costly and by adding another layer of additional testing will raise the cost. For example, testing all spill prevention equipment at a just one of my sites may involve the use of approximately 600 gallons of water per year since each site has at least three turbine sumps and three drop fuel sumps. Once the water has been used to test the spill prevention equipment, it will most likely be

deemed contaminated (although the determination of containment remains highly subjective). The "contaminated" water will need to be handled as hazardous waste and disposed of accordingly. The estimated disposal cost of this waste is about $8 per gallon, leading to an annual additional cost of $4,800 per site per annum. And since we are located on the neighbor islands, waste will need to be transported for disposal.

- Other costs need to be considerate are the cost of disruption of our ongoing business during the extensive testing and the additional administrative costs that will be required to comply with these proposed rules."

Comment from Patel's Texaco:
" Visual inspection of the spill prevention equipment should suffice. "

"Complying with the state's proposed requirement to do a leak detection test will incure added operating expense to the dealers."

"In this economy, these added expenses may force a lot of small businesses, that have put a lifetime of hard work to built the business, to close."

"As for overfill protestion (sic), removing drop tubes for inspection will be expensive and expose the tubes to damage."

"In conclusion, we believe the current EPA regulations are sufficient. All of us gas station owners are aware of our responsibilities towards our community, and are deligent (sic) about keeping our equipment maintained. Even if the small gas station owners are able financially to comply with the new regulations, the exobrient (sic) cost will be passed on to the consumer in form of higher fuel prices."

Comment from Kahala Gas:
"Spill Prevention Equipment, Containment Sumps, & Under Dispenser Containment – I agree that under dispenser containment is required but the annual costs associated with the proposed testing is high. I estimate annual compliance costs to be roughly $6,000.00. Again as a remote operator the costs will be passed onto the consumer or we may just close operations."

"Overfill Protection- Drop tubes are not meant to be removed to be inspected. They are expensive and fragile. In fact, the mere fact of removing the drop tube may damage it thereby increasing the likelihood of failure then replacement at a cost of roughly $700.00 per tube."

Comment from Chevron:
"We believe that the proposed method of testing spill prevention equipment could actually cause damage to equipment being tested. For example, drop tubes are fragile and expensive to replace, and they are not designed to be removed for inspection. The cost of the annual testing

will be high and passed on to the consumer. Water used to test the spill prevention equipment will in all likelihood be deemed to be hazardous waste, and it will have to be treated and disposed of as hazardous waste – another additional cost."

Comment from Gentry's Kona Marina:
"Requiring owners to perform a liquid tightness test annually on under dispenser containment is unnecessary if sumps are well maintained with alarms and inspected regularly. The cost for disposing of the hazardous liquid byproduct of the testing will be significant. Currently all hazardous waste is shipped off island for disposal. It may also mean shutting operations down during annual testing which will result in further loss of revenue. "

Comment from JMH Inc dba Ewa Mart & Ewa Repair Shop Inc:
"The method proposed by DOH to test spill prevention equipment, containment sumps and under dispenser containment will penalize dealers for the following reasons:

- The method of testing the equipment may actually damage the equipment;
- The cost of the annual testing is high and dealers will be forced to pass along the cost to their customers;
- The assurance offered by this type of testing may not compensate for the testing costs and business disruption; and
- Performing a leak test on containment sumps will needlessly generate a high volume of waste water for each test and will force dealers to absorb the high costs of disposal of the contaminated water."

"Further, I believe it is unnecessary to conduct integrity testing on secondary containment sumps because visual inspection along is sufficient to ensure that spill buckets are free of cracks, holes, debris and water."

"There are already requirements for UST systems to be equipped with automatic shutoff valves, high level alarms or flow restrictors. I also oppose the removal of drop tubes. Drop tubes are fragile and expensive. They are not meant to be removed for inspection, but only to be replaced. There is no justification for the need for overfill equipment testing as overfill evens are rare."

Comment from MidPac:
"The method of testing spill prevention equipment, containment sumps and under dispenser containment is objectionable to MPP in the following areas:

- The method of testing of the equipment may actually damage equipment that is being tested because these components were not designed to be tested in such a manner.

- The cost of annual testing is high and will be passed on to consumers. For example, testing all spill prevention equipment at a national site may involve the use of approximately 500 gallons of water per year. Once the water has been used to test the spill prevention equipment, it will most likely be deemed contaminated (although the determination of contamination remains highly subjective). The "contaminated" water will need to be handled as hazardous waste and disposed of accordingly. The estimated disposal cost of this waste is about $8 per gallon, leading to an annual additional cost of $4,000 per site per annum. The cost of disposal will be further exacerbated if the site is in a rural location, particularly the neighbor islands, where waste will need to be transported for disposal.
- Other costs that need to be considered are the cost of disrupted our ongoing business during the extensive testing and the additional administrative cost that will be required to comply with these proposed rules.
- Another objection to the rules if they are adopted as currently promulgated is the physical constraints placed on the technicians that will be involved in the testing. There are simply not enough qualified technicians to address the testing requirements in the proposed rules in a timely manner.
- The assurance offered by this type of testing may not be commensurate with the amount of cost and disruption to businesses."

"MPP opposes this requirement because the removal of drop tubes is required. They are fragile and expensive and are not meant to be removed for inspection, but only to be replaced. In addition, the efficacy of the testing is not certain and the act of testing these components may actually introduce more potential of a failure."

Comment from Aloha Petroleum:
"The DOH is proposing owners and operators test spill prevention equipment, catchment basins, spill buckets at installation and at least once every twelve months thereafter. Aloha opposes the proposed testing requirements."

"Aloha believes it is unnecessary to conduct integrity testing on secondary containment sumps. Visual inspection alone is sufficient to ensure that spill buckets are free of cracks, holes, debris and water. If the sump area is dry and clean upon visual inspection, then integrity of the containment areas is assured. Owners and operators are continuously performing visual inspection so spill buckets throughout the year. When a crack, hole or other damage is detected the spill bucket is replaced. Performing a "Leak Test" to assess integrity on containment sumps needlessly generates hazardous waste water that must be properly handled, stored, transported and disposed – all of which adds unnecessary compliance costs."

"Performing a "Leak Test" generates over 1,500 gallons of waste water per test at a typical three tank location, calculated below:

- 3 containment sumps measuring 4 feet diameter by 3 feet deep = 282 gallons of waste water per sump;
- 4 dispenser sumps measuring 4 X 2 X 3 feet deep – 168 gallons of waste water per sump;
- 3 spill buckets = 5 gallons of waste water per bucket
- 3 containment sumps + 4 dispenser sumps + 3 spill buckets = 1,533 gallons of waste water."

"At an estimated cost of $3.00 per gallon to dispose of contaminated waste water, the Leak Test would add more than $4,599 to the overall cost to comply with the DOH's proposal. In addition, the labor costs to conduct each test will increase $650 to $800. Aloha also has 85 sites that have electrical connections which must be moved before adding water to the sump, which will create a cost of $2,500 per location. Additional costs are calculated below:

- Water removal $4,599 x 85 sites = $390,915;
- Electrical $2,500 x 85 = $57,500;
- Labor = $700 x 85 = $59,500;
- Total increase in cost for the first year testing = $507,915
- Estimated annual cost of $450,415 thereafter to maintain compliance with the new rules."

"Overfill prevention equipment (flappers, ball floats, alarms) is required to be checked annually for proper functioning."

"Aloha is concerned with this proposal because it requires removal of UST drop tubes, which are expensive, lightweight and fragile. UST drop tubes are not designed to be removed for inspection, but only when they are replaced. Requiring the removal and inspection of drop tubes is tantamount to a replacement mandate with associated costs of approximately $700 per unit. Aloha's concern is heightened given the probability that the only testing standard likely to emerge will be from organizations representing equipment manufacturers who have a vested interest in equipment replacement."

Comment from HFN Hawaii:
"HPI believes it is unnecessary to conduct integrity testing on secondary containment sumps. Visual inspection alone is sufficient to ensure that spill buckets are free of cracks, holes, debris and water. If the sump area is dry and clean upon visual inspection, then integrity of the

containment areas is assured. Owners and operators are continuously performing visual inspections of spill buckets throughout the year. When a crack, hole or other damage is detected the spill bucket is replaced. Performing a "Leak Test" to assess integrity on containment sumps needlessly generates hazardous waste water that must be properly handled, stored, transported and disposed – all of which adds unnecessary compliance costs."

"The method of testing spill prevention equipment, containment sumps and under dispenser containment is objectionable because 1) the method of testing of the equipment may actually damage equipment that is being tested because these components were not designed to be tested in such a manner (2) the cost of the annual testing is high and will be passed on to consumers. For example, testing all spill prevention equipment at a site may involve the use of several hundred gallons of water per year. Once the water has been used to test the spill prevention equipment, it will most likely be deemed contaminated. The water will need to be handled as hazardous waste and disposed of accordingly. The estimated disposal cost of this waste is about $8 per gallon, leading to a huge annual cost per site per annum. The cost of disposal will further exacerbated if the site located on the neighbor islands, where waste will need to be transported for disposal (3) Other costs that need to be considered are the cost of disrupted our ongoing business during the extensive testing and the additional administrative cost that will be required to comply with these proposed rules."

"Overfill prevention equipment (flappers, ball floats, alarms) is required to be checked annually for proper functioning."

"HPI is very concerned with this requirement because the removal of drop tubes is required. Drop tubes are not meant to be removed to be inspected. The equipment is fragile and expensive. To constantly remove for inspection would increase the risk of damaging it requiring replacement or worse a potential failure. "

Comment from HFN Maui Petroleum:
"The method of testing spill prevention equipment, containment sumps and under dispenser containment is objectionable to MPI in the following areas:

- The method of testing the equipment may actually damage equipment that is being tested because these components were not designed to be tested in such a manner.
- The cost of the annual testing is already high and will be passed on to consumers. For example, testing all spill prevention equipment at a national site may involve the use of approximately 500 gallons of water per year. Once the water has been used to test the spill prevention equipment, it will most likely be deemed contaminated (although the determination of contamination remains highly subjective). The "contaminated" water

will need to be handled as hazardous waste and disposed of accordingly. The estimated disposal cost of this waste is about $8 per gallon, leading to an annual additional cost of $4,800 per site per annum. The cost of disposal will be further exacerbate if the site is in a rural location, particularly the neighbor islands, where waste will need to be transported for disposal.

- Other costs that need to be considered are the cost of disruption of our ongoing business during the extensive testing and the additional administrative cost that will be required to comply with these proposed rules.
- The assurance offered by this type of testing may not be commensurate with the amount of cost and disruption to businesses.
- The introduction of any water in the vicinity of an ethanol gasoline is strictly prohibited..... Drop/flapper tubes are fixed in place and are not designed to be removed unless they are being replaced."

"Maui Petroleum opposes this requirement because the removal of drop tubes is required. They are fragile and expensive and not meant to be removed for inspection, but only to be replaced. In addition, the efficacy of the testing is not certain and the act of testing these components may actually introduce more potential of a failure."

"Drop/flapper tubes are fixed in place and are not designed to be removed unless they are being replaced.

Comment from 76 Dealers:

"Secondly, the method of *testing spill prevention equipment, containment sumps and under dispenser containment* is objectionable to MPP in the following areas:

- The method of testing the equipment may actually damage equipment that is being tested because these components were not designed to be tested in such a manner, i.e., overfill tube flappers
- The testing and cost of the annual testing is already costly and by adding another layer of additional testing will raise the cost. For example, testing all spill prevention equipment at a just one of my sites may involve the use of approximately 600 gallons of water per year since each site has at least three turbine sumps and three drop fuel sumps. Once the water has been used to test the spill prevention equipment, it will most likely be deemed contaminated (although the determination of contamination remains highly subjective). The "contaminated" water will need to be handled as hazardous waste and disposed of accordingly. The estimated disposal cost of this wste is about $8 per gallon, leading to an annual additional cost of $4,800 per site per annum.

And since we are located on the neighbor islands, waste will need to be transported for disposal.

- Other costs that need to be considered are the cost of disruption of our ongoing business during the extensive testing and the additional administrative cost that will be required to comply with these proposed rules."

Comment from Tesoro:
"Spill Prevention Equipment, Containment Sumps and Under Dispenser Containment (HAR 11-281-19, and HAR 11-281-41(c)). Paragraph 2 reads: "Spill prevention equipment (spill buckets) and containment sumps that are utilized as part of an interstitial monitoring system must pass a test annually to ensure that they are liquid tight."

"Does that mean that if the spill bucket is not part of the interstitial monitoring system (which most aren't because they are not connected with any piping or tank interstitial space) that they would **not** require testing?"

"Currently most protocols for testing interstitial containment utilize a hydrostatic test which involves putting several gallons of water (sometimes 25-30 or more) into the sump and monitoring the level in the sump for a period of time. Once the water has been placed in the sumps it picks up residual petroleum products that are typically in these sumps and by definition becomes and a hazardous waste. Because the water is now a hazardous waste it must be disposed as such. Disposing of this waster is expensive and extremely difficult as it must be shipped back to the mainland for disposal. Because of DOT regulations it is doubtful that the testing companies will transport the waste instead they will leave it on site for the store managers to deal with. This creates hazardous waste storage issues for the store and in most cases it will not be disposed of expeditiously because of the cost and difficult logistics."

"Requiring this test every year would seem to be overkill. Tesoro believes that it would be more reasonable to require the test every three years for containment sumps and because of the unique circumstances in Hawaii provide some practical method to dispose of contaminated sump waster created by these tests. As written, the cost and logistical problems created by this regulation seem to far outweigh any environmental benefit."

Comment from Navy:
"§11-281-41(c)(2)... The statement is confusing because of the phase: "that are part of an interstitial monitoring system". We are not aware of any spill buckets that are directly associated with interstitial monitoring. If the intent is to perform annual tests of these units, recommend the DOH revise the wording to read: "Spill prevention equipment (spill buckets), under dispenser containment, and containment sumps must pass a test at least every three hundred sixty-five days to ensure this equipment is liquid tight. "

"§11-281-41(c): For the testing of under dispenser containment and containment sumps, why is the frequency annual? Why not once every two or three years? Annual tests of under dispenser containment and containment sumps are a significant cost to an operator. We prefer 30-day visual inspection by the operator to determine if there is any free product in them."

"§11-281-41(c): Will there be recommended testing methods and technician qualification/ certifications to test spill prevention equipment, under dispenser containment, and containment sumps? If so, we recommend listing the methods and qualifications/certifications that are pre-approved by the DOH."

STATE Response:

The department has deferred requiring additional testing of sumps, under dispenser containment and other equipment associated with interstitial monitoring at this time. It is also deferring the requirement that overfill prevention equipment must be tested annually.

Please note that these types of testing are present in EPA's proposed rules and may be implemented at a later date.

However, annual testing of the spill bucket is still required in the proposed rules.

Red Tagging Requirement

Comment from DoD Navy:

"DoD supports this state-proposed regulation, but desires to include some mission essential flexibility for USTs on military installations. Specifically, when considering a delivery prohibition, State of Hawaii Department of Health (DOH) should have clear authority to defer the prohibition when the prohibition will negatively impact our military installations' national security mission, or increase risk to human health or the environment."

"Of particular concern to DoD is the effect a delivery prohibition could have on military operations and humanitarian disaster relief efforts. For example, some military USTs are used to store JP-8, a fuel used in military aircraft, armored vehicles and emergency generators. A delivery prohibition could thus halt military operations, force re-routing of critical armament or personnel, or cause other adverse national security impacts...."

"DoD recommends the addition of the following subparagraph (f) to the end of §11-281-129:

(f) If a prohibition under (a) of this section would have an adverse effect on the United States military mission or would increase risk of harm to human health or the environment, the department may defer, upon written request by the owner, the prohibition for a period of no more than 180 days after the determination under (a) of this section is made."

STATE Response:
The guidelines specify when delivery prohibition is mandatory and allows for exceptions "based on whether the prohibition is in the best interest of the public." However, the guidelines do not allow DOH to categorically exempt UST facilities at DoD installations. Furthermore, categorical exemptions are not necessary given that DOH retains the discretion under the guidelines of the Energy Policy Act of 2005, to allow delivery to non-compliant UST systems on a case-specific basis if doing so is "in the best interest of the public."

Operator Training

Comment from Tesoro:
"Operator Training (HAR 11-281-46)"
"This section reads in part "you will need to submit Class and B operator designee names with their certification and associated facilities to DOH..."

"While Tesoro agrees with the need for training for Level A and B operators, the requirement to submit additional paperwork to DOH for acceptance after a person is certified is time consuming and would burdensome to DOH. The sheer volume of paperwork that will be submitted to DOH will be staggering as all stores are required to have level A and B operators and most stores will have multiple operators at any particular level. Our experience in other states indicates that this type of requirement is time consuming and creates no advantage for the system."

"It would seem more reasonable to make use of Hawaii's excellent inspection system to check that the level A and B operators at the store during inspections. This would establish that the person actually working in the store has the proper certification and the store is being operated as required under the regulations."

STATE Response:

One hundred twenty days after the effective date of the rules, owners and operators must designate a class A , class B and class C operator. DOH will be developing a "Statement of Training' form to assist owner and operators identify the operators.

Owners and operators shall submit written notice to the department identifying the class A and class B operator no later than thirty days after and an operator assumes the operator's responsibilities.

Comment from Gentry's Kona Marina:

"Operator Training (HAR 11-281-46) adds additional training and administrative expense to already struggling small businesses."

STATE Response:

Operator training is a federal requirement and is necessary to ensure that those working with UST systems understand what to do and who to contact in case of emergency.

Comment from Navy:

"11-281-46(c): Training and certification requirements for class A, class B, and class C operators. Are there any in-class or on-line training approved by the DOH available to review prior to the rules being approved into law?

STATE Response:

DOH is currently reviewing operator training programs. All of the programs that have been submitted for approval are thus far all online. The list of approved programs will be available at http://hawaii.gov/health/environmental/waste/ust/index.html when the rules are promulgated.

Other

Comment from WMF:

"replacing Tier 1 Action Levels with Tier 1 Screening Levels for Soil and Groundwater;"

(b) Owners and operators must remediate contaminated soil, groundwater and surface water at the site to residual [levels which] concentrations that meet one of the following criteria: (1) Default[tier]Tier1[actionlevels]Screening Levels as presented in Table [1-1a] (page 281-79)

"I find this sentence confusing it seems to say default is old and new levels, use both at the same time, then it refers to the old levels Tbl 1-1a. Why not just say-use the new levels, tbl 1"screening"? (see below). No reference is made to the new "screening" table 1. Also both are table 1, why not call them table 1 and table 2."

STATE Response:
The proposed HAR 11-281 rules changes do not include two tables, just one. This misunderstanding may have been caused by the unique formatting used in the proposed changes such as brackets for [To Be Deleted] and Underlined for To Be Included. The Tier 1 Screening Levels in Table 1 are default maximum contaminant levels for all sites regardless of drinking water utility, residential/commercial, or proximity to surface water.

Comment from Wayne Easley:
"On your section 11-281-53, there's a change on pressurized piping. What you don't give is an implementation date. Once the rules are accepted, how much time, three years, one year, six months before we have to comply with that section?"

STATE Response:
There is no change to the requirements for pressurized piping. The language found in 11-281-53 replaces that section previously called 11-281-51(e). Requirements for new and existing piping have been separated because new piping has to be double walled and use interstitial monitoring.

Comment from Wayne Easley:
"On page 281-46, keeping records on site at each site. For those of us who keep corporate offices in the past.... You guys did approve that we could keep our records at our corporate office, mainly because they're quire intense and we don't' want them floating around at each site. It now refers to an alternate method as approved by director. Could you eventually give us comment on that, how we find an alternate method approved by director?"

STATE Response:
DOH did not change the requirement for recordkeeping. Some of the recordkeeping requirements have been consolidated in the rules. The facility still has an option to maintain records at an alternate location that is approved by the director.

Comment from Keaau Service:
" In reviewing the *overall proposed rules,* we note that in every proposed modification of the current rules, there are no specific policies and procedures listed. Everything is written in generalities. What could be at issue is that with no specific policies and procedures, it leaves the rules open for interpretation later – without specific knowledge of what we are agreeing to it could make it more costly both in time and money."

Comment from 76 Dealers:
"In reviewing the *overall proposed rules,* we note that in every proposed modification of the current rules, there are no specific policies and procedures listed. Everything is written in generalities. What could be an issue is that with no specific policies and procedures, it leaves the rules open for interpretation later—without specific knowledge of what we are agreeing to it could make it more costly both in time and money."

STATE Response:
DOH will provide additional guidance as the need arises or when requested.

Comment from Mark Leong:
"Similarly, with single wall piping, I mean, the EPA is proposing that if you inflate 50 percent or more, then the whole line needs to be replace. For the State of Hawaii, they're just saying any portion needs to be double walled... why the State of Hawaii is trying to propose rules when the EPA rules aren't even final yet."

STATE Response:
The proposed rules do~~es~~ not require you to replace all of the piping when you exceed 50 percent. However, any portion that is replaced will need to be replaced with double walled piping with interstitial monitoring.

Comment from Tesoro:
"Records (HAR 11-281-45(b), and HAR 11-281-46)."
"If a release detection monitoring system is capable of producing a written (printout) or

electronic record of testing results... Release detection records and maintenance records must be kept for at least three years after the record is generated."

"The issue with this section is that systems with printout ability typically have thermal printers on their Automatic Tank Gauges (ATG). Unfortunately, the thermal print does not last and well before the three years have elapsed, the print will have disappeared. Given your requirement to have the data in the store and the lack of longevity it would seem that this type of record keeping for three years is difficult at best and may be functioning impossible in this manner."

"A possible solution to this problem would be to allow spreadsheet type record keeping which many stores already use as a substitute. The spreadsheet approach would allow much less cumbersome record keeping, provide a more permanent record and allow inspectors to quickly check compliance without laboriously going through 36 months worth of printouts. Additionally, allow it to be kept off site, but immediately available, as is consistent with EPA regulations, would make retention of historical files much less burdensome for store operators."

STATE Response:
We are trying to minimize opportunities for misinterpretation that are inherent in creating your own record. If there is a concern about the fading thermal paper, copies can be made of the print out to preserve the integrity. You may also scan in the tape and have an electronic file instead of a spreadsheet.

Questions

Comment from Navy:
"§11-281-19: Under the new UST rules, do existing under dispenser containment (installed before the effective date of the new UST rules) have to be equipped with a leak sensing device and pass an annual tightness test?"

STATE Response:
No

Comment from Navy:
"§11-281-19: What are the differences in under dispenser containment requirements for the installation of a new dispenser at a site with existing under dispenser containment

a) PRIOR to the new State UST laws being adopted, versus
b) AFTER the effective date of the new UST rules?

STATE Response:

Currently, there is no requirement for installation and monitoring of under dispenser containment. After the effective date of the new State rules – Dispensers installed on or after the effective date of the rules must have an under dispenser containment (UDC). The containment must be:
(1) Be liquid-tight on its sides, bottom and at any penetrations;
(2) Be compatible with the substance conveyed by the piping;
(3) Allow for visual inspection and the components in the containment system must be accessible; and
(4) Be monitored with a sensing device that signals the operator of the presence of regulated substances.

USTs (with a dispenser) installed after the effective date of the rules must have an UDC.

If you have an existing station and install a dispenser (whether being reused or new), then an UDC is also required, because you have installed the dispenser after the effective date of the rules.

In both cases, UDCs need to be monitored with a sensing device. If you have an existing UDC, you do not need to have a sensing device. The sensing device is required for UDC installed after the effect date of the rules.

Comment from Navy:

"11-281-44: Is there a time requirement standard for repairing/correcting a problem for routine or emergency issues? Will exemptions be allowed due to material, technician, and funding availability if the problem does not get corrected within the time requirement?"

STATE Response:

DOH must be notified within 24 hours of discovery of a suspected release.

There is no time requirement for repairs. There are requirements for confirming suspected releases, temporarily closing USTs and monthly monitoring of the USTs.

If the problem or repair does not get corrected due to funding availability, the UST must be placed in temporary closure if monthly monitoring cannot be done. You can either empty the

UST to less than an inch of product and do not need to monitor the UST. If there is more than one inch of product, you need to continue monthly release detection.

Comment from Navy:

"Unattended locations

a) §11-281-41(a): Are there waivers or exceptions to have owners and operators constantly monitor fuel transfers?

b) §11-281-51: Will there be an additional requirement to monitor remote/unattended locations remotely? If so, will there be recommended/approved software/hardware?"

c) §11-281-61: Will there be exemptions if a fuel alarm occurs, but gets reported at a later time (2 or more days later)?"

STATE Response:

(a) No

(b) No

(c) DOH must be notified within 24 hours of discovery of a suspected release.

	TESTIMONIES GIVEN BY:	Company	Oral/Written	Date
1.	Mark Frasier	WMF HI Env	Written	3.1.13
2.	Howard West	ESI	Oral	3.8.13
3.	Wayne Easley	Easley Corp.	Oral	3.8.13
4.	Mark Leong	HFN Maui Petroleum	Oral	3.8.13
5.	Robert Fung	Aloha Petroleum	Oral	3.8.13
6.	Hawaii Petroleum Marketers	Association (HPMA)	Written	3.8.13
7.	C.L. Stathos	Dept of Defense	Written	5.7.13
8.	Benjamin Alonzo, Sr.	Keaau Service	Written	5.9.13
9.	Tina Prettyman	Gentry's Kona Marina	Written	5.9.13
10.	Wendell Pestana	Ewa Repair Shop	Written	5.9.13
11.	I Sun Hwang	JMH Inc dba Ewa Mart	Written	5.9.13
12.	Edsel Eshima	Chevron	Written	5.9.13
13.	Smita Patel	Patel's Texaco	Written	5.10.13
14.	John Aickin	Kahala Gas	Written	5.10.13
15.	Aaron Y. Poentis	Dept of Navy	Written	5.10.13
16.	Robert Fung	Aloha Petroleum	Written	5.10.13
17.	Norman Stewart	Tesoro	Written	5.10.13
18.	Mark Leong	HFN Hawaii Petroleum	Written	5.10.13
19.	Steve Wetter	HFN Maui Petroleum	Written	5.10.13
20.	K. Sayle Hirashima	Mid Pac Petroleum	Written	5.10.13
21.	Various below	76 Station Dealers	Written	5.10.13

(Randy Amine, Jon Tsutsumi, Chad Willing, Blake Tanaka, Keith Nagano, Gail Au, Eric Park, Cheryl Gonzalez, Burt Chinen, Dan Del Mundo, Kat Tandal)